

MANIA K. BAGHDADI  
ANNE GOODWIN CRUMP  
VINCENT J. CURTIS, JR.  
THOMAS J. DOUGHERTY, JR.  
JAMES G. ENNIS  
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JAMES P. RILEY  
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MARVIN ROSENBERG  
STEPHEN R. ROSS  
TIMOTHY R. SCHNACKE\*\*  
LONNA M. THOMPSON  
HOWARD M. WEISS

\*ADMITTED IN TEXAS ONLY  
\*\*ADMITTED IN KANSAS ONLY

ORIGINAL  
FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

SUITE 400, 1225 CONNECTICUT AVENUE, N.W.

WASHINGTON, D.C. 20036-2679

(202) 828-5700

TELECOPIER NUMBER

(202) 828-5786

PAUL D.P. SPEARMAN  
(1936-1982)  
FRANK ROBERSON  
(1936-1981)

RETIRED  
RUSSELL ROWELL  
EDWARD F. KENEHAN  
ROBERT L. HEALD  
FRANK U. FLETCHER

TELECOMMUNICATIONS CONSULTANT  
HON. ROBERT E. LEE

WRITER'S NUMBER  
(202) 828-

5773

April 10, 1992

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APR 10 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

Re: Emporia and Madison, Kansas  
Petition for Rulemaking

Dear Ms. Searcy:

Transmitted herewith, on behalf of Communications Group, Inc., licensee of KEGS(FM), Emporia, Kansas, are an original and five (5) copies of its Petition for Rulemaking to change the allotment of Channel 269C2 from Emporia to Madison, Kansas, and, pursuant to Section 1.420(i), to modify the KEGS(FM) license to specify Madison as its community of license.

If you have any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

FLETCHER, HEALD & HILDRETH



David N. Roberts

DNR/cia  
Enclosures

cc: Mr. Andrew J. Rhodes, Chief, Allocations Branch, Mass Media  
Bureau (with enclosure) (by hand)

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 10 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of

Amendment of Section 73.202  
Table of Allotments  
FM Broadcast Stations  
(Emporia, Madison, Kansas)

)  
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)  
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)

RM No. \_\_\_\_\_

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

Communications Group, Inc. ("Communications Group"), licensee of KEGS(FM), Emporia, Kansas, petitions the Commission to initiate a rulemaking to amend the Table of Allotments for FM broadcast stations, Section 73.202 of the Commission's Rules, to change the community of allotment of channel 269C2 from Emporia, Kansas to Madison, Kansas, and, pursuant to Section 1.420(i), to modify the KEGS(FM) license to specify Madison as its community of license, and in support thereof respectfully shows:

Background Facts

1. Station KEGS(FM) is currently broadcasting on Channel 269A, Emporia, Kansas. By Report and Order, MM Docket 90-65, released December 7, 1990, the Commission authorized an amendment of the FM Table of Allotments to allow KEGS(FM) to upgrade from Channel 269A to operate on Channel 269C2 at Emporia.

2. On April 20, 1991, Communications Group filed an application for the upgrade to Channel 269C2. (File No. BPH-920422IE) Communications Group specified a site approximately

thirty-two kilometers south of Emporia to avoid short-spacing problems. This application was dismissed due to inconsistent geographic coordinates by a letter from the Commission's staff dated August 20, 1991. A new application that corrected the site coordinates was filed on October 12, 1991. (File No. BPH-91105ID) The engineering exhibits to both the original and the new application specified the same site and demonstrated that the site chosen was in full compliance with all of the Commission's spacing requirements.

3. From the specified site, the applicant believed that 82.5% of Emporia was within KEGS(FM)'s 70 dbu contour, satisfying the Commission's coverage requirement. However, recent detailed examination of official maps of the city of Emporia, including areas annexed to the city, an examination conducted in response to a Commission inquiry, determined that only approximately 70% of Emporia could be encompassed by the KEGS(FM) 70 dbu contour with KEGS(FM) using the most advantageous combination of site and antenna pattern.

4. On the other hand, 100% of Madison, Kansas is within the KEGS(FM) 70 dbu contour at the site proposed in the pending application. (See Engineering Statement of Larry P. Waggoner, Attached hereto as Exhibit "A.") Madison, Kansas, (1980 Census population 1,099) an incorporated city in Greenwood county, currently does not have any broadcast channels allotted to it. Emporia, by contrast, currently has four FM stations and one AM station licensed to it. Id. Emporia also receives service from

a number of stations in addition to those licensed to Emporia.  
Id.

5. The proposed re-allotment of Channel 269C2 to Madison, Kansas is mutually exclusive with its current allotment to Emporia, Kansas. Id.

6. An analysis of the current situation clearly demonstrates that a re-allotment of Channel 269C2 from Emporia to Madison would serve the Commission's allotment priorities better than the status quo, and would allow KEGS(FM) to operate as a C2 station rather than reverting to its former Class A status. Reverting to Class A status would diminish the coverage area of KEGS(FM) from 8,527.57 square kilometers for the proposed Class C2 operation to the 1,822.21 square kilometers which KEGS(FM) covers as a Class A station. If the Commission implements the re-allotment, no area currently receiving service from KEGS(FM) will lose service.

#### Analysis

7. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 F.C.C. Rcd 4870 (1989) ("Modification") and by a Memorandum Opinion and Order, 5 F.C.C. Rcd 7094 (1990), which responded to Petitions for Reconsideration of Modification ("Modification II"), the Commission set out a procedure whereby a station could petition to amend the table of allotments to specify a new community of license and apply to modify its license accordingly without placing its existing authorization at

risk. Modification, 4 F.C.C. Rcd at 4870. In order for such a petition to be granted, it must propose an allotment that is mutually exclusive with the existing allotment and result in a preferential arrangement of the table of allotments according to the Commission's allotment priorities. Id. Because the proposed reallocation here is mutually exclusive with the existing allotment, the only issue is whether a preferential arrangement of the table of allotments will result if this Petition for Rulemaking is granted.

8. The FM allotment priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88, 92 (1982). The second and third priorities are given equal weight. Id. Both Madison and Emporia already receive at least two aural services. The third allotment priority, first local service, is the first of the Commission's goals impacted here. Madison, with no local service, clearly prevails over Emporia, which would still have four local aural services after the re-allotment.

9. In evaluating the proposal under the fourth priority, public interest, the re-allotment again prevails over the status quo. In Modification II, the Commission stated that it would be appropriate, in evaluating a proposed re-allotment under the allotment priorities, to consider whether the proposal would result in shifting of service from an under-served rural area to a well-served urban area. 5 F.C.C.Rcd at 7096. Under


Communication Group's proposal, exactly the opposite would be accomplished; service would be shifted from a well-served urban area to an under-served rural area. In terms of local service, Madison is not only under-served, it is unserved. By contrast, Emporia, which will retain the four local aural services under the proposal, is well-served and will continue to receive excellent service from KEGS(FM). Therefore, rather than present a possible public interest problem, Communication Group's proposal presents a tangible public interest benefit, with no penalty to the current city of license.

10. Regardless of its effect on the allotment priorities, a petition to change a community of license under the Commission's rules cannot be granted if it would deprive the existing community of license of existing service representing its only local broadcast service. Modification, 4 F.C.C. Rcd at 4874. FM and AM stations, as aural services, are considered the same service for the purposes of this determination. Modification II, 5 F.C.C. Rcd at 7096. If this Petition for Rulemaking is granted, Emporia will still have three aural services licensed to it. Furthermore, all of Emporia will receive excellent coverage from KEGS(FM)'s proposed site. Indeed, all of the areas currently receiving service will continue to receive it. There is no loser under this proposal, only a winner in terms of Madison receiving its first local service.

**WHEREFORE**, Communications Group, Inc. petitions the Commission to initiate a rulemaking to amend the Table of

Allotments for FM broadcast stations, Section 73.202 of the Commission's Rules, to change the community of allotment of channel 269C2 from Emporia, Kansas to Madison, Kansas and to modify the license of KEGS(FM) accordingly.

Respectfully submitted,  
COMMUNICATIONS GROUP, INC.

By:   
James P. Riley  
David N. Roberts

Its Attorneys

FLETCHER, HEALD & HILDRETH  
Suite 400  
1225 Connecticut Avenue, N.W.  
Washington, D.C. 20036

(202)828-5700

April 10, 1992

**EXHIBIT A**



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& HILDRETH

COMMUNICATIONS GROUP, INC.

PETITION TO AMMEND THE FM TABLE OF ALLOTMENTS

PRESENT: CHANNEL 269C2 EMPORIA, KANSAS  
PROPOSED: CHANNEL 269C2 MADISON, KANSAS

APRIL 1, 1992

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ENGINEERING STATEMENT

**LARRY P. WAGGONER**  
*Broadcast Technical Consultant*

1712 VALLEYVIEW CT. • WICHITA, KS 67212 • (316) 722-3726

April 1, 1992

### ENGINEERING STATEMENT

I, Larry P. Waggoner, have been retained by the Communications Radio Group, Inc. to prepare this Engineering Statement in support of their petition for rule making to amend the FM Table of Allotments, Section 73.202(b) of the FCC Rules, reference a proposed change of the allotment of Channel 269C2 from Emporia, Kansas to Madison, Kansas.

The proposed new assignment of Channel #269C2 to Madison, Kansas is mutually exclusive with its current allotment to Emporia, Kansas (Co-channel C2 to C2 spacing 190 km). The site restriction for Class C2 operation on the channel is in an area 31.5 kilometers south of the city of Emporia. The city of Madison is located 31 kilometers south of Emporia. The proposed Class C2 transmitter site for Channel #269 is located only 6 kilometers southwest of Madison and will provide coverage well in excess of city grade to all of Madison with no terrain blockage.

Madison, Kansas currently has no local services. Moving Channel #269C2 to Madison will leave Emporia, Kansas with four local services.

KVOE(AM)	1400 KHz 1kw/1kw ND
KNGM(FM)	Channel 220A
KGZF(FM)	Channel 258A
KFFX(FM)	Channel 285A

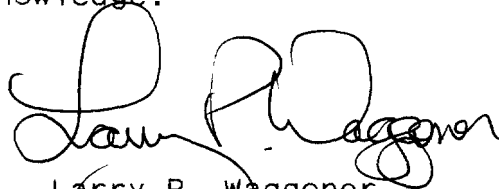
A 1991 national radio rating service lists six other "out of market" stations that have equal or in the case of two stations, better ratings than stations licensed to the city of Emporia. These stations are:

KMAJ(FM)	Channel 299C	Topeka, KS
WDAF(AM)	610 KHz 5kw ND	Kansas City, MO
KDVV(FM)	Channel 262C	Topeka, KS
KZOC(FM)	Channel 225C2	Osage, KS
WIBW(FM)	Channel 247C	Topeka, KS
KFDI(FM)	Channel 267C	Wichita, KS

The proposed KEGS(FM) Class C2 operation will provide 1.0 mv/m service to 8,527.57 square kilometers. The 3.0 kw Class A KEGS(FM) application (BLH-850128LB) listed 1.0 mv/m service to 1,822.21 square kilometers.

The KEGS Class A transmitter site is located 28.21 kilometers distant from the proposed Class C2 transmitter site on a bearing of 14.1°. The KEGS 3.0 kw ERP 1.0 mv/m contour along this 14.1° radial was predicted to be located a distance of 24.5 kilometers. The Class C2 1.0 mv/m contour on the 14.1° radial is located at a distance of 52.8 kilometers. The proposed 50 kw ERP 1.0 mv/m contour will completely encompass the original 3 kw ERP 1.0 mv/m contour.

The information presented in this report is true and accurate to the best of my knowledge.



Larry P. Waggoner  
Broadcast Technical Consultant  
1712 Valleyview Court  
Wichita, Kansas 67212  
316-722-3726

